

INTERNAL REVENUE SERVICE
DISTRICT DIRECTOR
P.O. BOX 2508
CINCINNATI, OH 45201

DEPARTMENT OF THE TREASURY

Person to Contact:

Contact Telephone Number:

Reply to:

Date: AUG 18 1997

CERTIFIED MAIL:

Dear Applicant:

We have considered the information submitted in support of your application for recognition of exemption from federal income tax under section 501(c)(3) and are unable to make a determination whether you qualify for exemption under this section. Our reasons for this conclusion and the facts on which it is based are explained below.

The evidence submitted indicates that your organization was incorporated on [REDACTED], under the laws of [REDACTED] and that you are organized and operated exclusively for educational and charitable purposes within the meaning of section 501(c)(3) of the Internal Revenue Code of 1986. Article Third of these Articles of Incorporation further state that "The purposes for which this corporation is organized are:

1. to organize concerned citizens and energy consumers who collectively purchase large quantities of electricity and gas from large utility companies;
2. to educate individual energy consumers regarding utility issues;
3. to protect the interests of utility consumers through the intervention in matters before public utility commissioners in the United States; and
4. to do anything else necessary to protect the interests of utility consumers.

Adequate provision has been made in these Articles of Incorporation to provide for the distribution of your organization's assets to qualified 501(c)(3) entities in the event the corporation dissolves.

Your initial application states that "The planned activities of the organization involve educating the public and promoting general awareness of [REDACTED] affecting [REDACTED] payers. The organization also plans to coordinate citizen's efforts regarding [REDACTED]"

Initiator	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer	Reviewer
[REDACTED]	[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]	[REDACTED]				
[REDACTED]	[REDACTED]	[REDACTED]				

In a letter dated [REDACTED], we requested additional information regarding the proposed activities of your corporation, including, but not limited to, a more detailed description of your activities, a proposed budget, and a chronology of what your organization has done during the previous year to accomplish your exempt purposes.

In your response to this request dated [REDACTED], you indicated that "the organization is not in full operation as of this date." You further state that your organization plans to publish a monthly newsletter which will be distributed to members and that copies of these newsletters will be made available to the general public." You also state that "the corporation also plans to hold panel discussions approximately six times a year and that these discussions will run approximately two hours in length."

Your response dated [REDACTED] provides "that [REDACTED] applications for [REDACTED] ([REDACTED]), will review [REDACTED] made before [REDACTED] boards to ensure that [REDACTED] are not raised unnecessarily and to ensure that no improper costs are passed on to the consumer, attend public hearings regarding [REDACTED] issues and gather information from national [REDACTED] and [REDACTED] commissions." You also state that ([REDACTED]) will "review global information regarding [REDACTED] and [REDACTED] and attempt to make projections as to future [REDACTED] and availability and also stay abreast of developing technologies to ensure that the public has access to environmentally safe, efficient [REDACTED] ."

In response to our request to submit a chronology and description of your activities during the past year, you state that "Please be advised that there has been virtually no activity of the organization over the past year and that you have no pamphlets or other printed materials to describe your activities."

You indicate that to date ([REDACTED]) received \$ [REDACTED] in contributions for the year [REDACTED] and had expenses of \$ [REDACTED] to pay the required user fee to apply for tax exempt status.

Section 501(c)(3) of the Internal Revenue Code provides for exemption from federal income tax for organizations organized and operated exclusively for charitable, religious, educational and other stated purposes, no part of the net earnings of which inures to the benefit of any private shareholder or individual.

Section 1.501(c)(3)-1(a)(1) of the Income Tax Regulations provides that in order to qualify for exemption under section 501(c)(3), an organization must be both organized and operated exclusively for one or more exempt purposes. Failure to meet either the organizational or operational test will disqualify an organization from exemption under this section.

Section 1.501(c)(3)-1(b)(1) of the Income Tax Regulations specifies that an organization is organized for one or more exempt purposes if its Articles of Incorporation limit the purposes of the organization to exempt purposes.

Section 1.501(c)(3)-1(b)(vi) of the Income Tax Regulations state that an organization is not organized exclusively for one or more exempt purposes if, by the terms of its articles, its purposes are broader than the purposes specified in section 501(c)(3).

Section 1.501(c)(3)-1(b)(4) of the Income Tax Regulations provide that an organization is not organized "exclusively" for one or more exempt purposes unless its assets are dedicated to an exempt purpose. An organization's assets will be considered dedicated to an exempt purpose if, upon dissolution, such assets would, by reason of a provision in the organization's articles of incorporation or by operation of law, be distributed for one or more exempt purposes or to the federal government, or to a state or local government for a public purpose.

Section 1.501(c)(3)-1(d)(1) of the Income Tax Regulations states that an organization is not organized or operated for any purpose under section 501(c)(3) unless it serves exclusively public rather than private interests. Thus, to meet the requirements of this subparagraph, an organization must demonstrate that it is not organized and operated exclusively for the benefit of private interests such as designated individuals, the creator or his family, shareholders of the organization or persons controlled directly or indirectly by such private interests.

Organizations that are organized and operated on a non-profit basis do not automatically qualify for exemption under section 501(c)(3). The fact that an organization does not make a profit is not the determining factor. See United States v. LaSociete Francaise de Bien. Mut. 152, F.2d, 243 (9th Cir. 1945), cert. denied 327 793 (1946); Hassett v. Associated Hospital Service Corporation, 125 F.2d 811(1st Cir. 1942, cert. denied 316 U.S. 672 (1942); Baltimore Health and Welfare Fund v. Commissioner, 69 T.C. 554 (1978); and B.S.W. Group Inc. v. Commissioner, 70 USTC 352 (1978).

In Better Business Bureau v. United States, 326 U.S. 270-283, the court held that the existence of a single non-exempt purpose, if substantial in nature, will destroy exemption under section 501(c)(3). In order to qualify for exemption under this section, the applicant organization has the burden of proof to show that (1) it is organized and operated exclusively for a purpose or purposes described in section 501(c)(3), (2) that no part of its net earnings inures to the benefit of any private shareholder or individual and (3) that no substantial part of its activities consists of the dissemination of propaganda or otherwise attempting to influence legislation or engaging in political activity. See Kenner v. Commissioner, 318 F. 2d, 832, (7th Cir. 1963)

In LaVerdad v. Commissioner, 82 USTC 215, the court discusses a situation where an organization applies for tax exempt status in advance of operations. The court states that "it is acknowledged that an organization may seek tax exempt status in advance of operations. It must, however, describe its operations in sufficient detail to permit the conclusion that it will meet the necessary requirements of the section under which exemption is claimed." Without adequate information, denial of exemption is warranted. Church in Boston v. Commissioner, 71, 102, (1976).

In Levy Family Tribe v. Commissioner, 69 USTC, 615, the court reviews an application for an organization seeking tax exempt status under section 501(c)(3). Under this section, an organization must establish that it is organized and operated exclusively for one or more exempt purposes described in this section and that it serves exclusively public rather than private interests. In Levy, the court states that "No where in the administrative record is there any description or explanation of how the conducted activity furthers an exempt purpose. The record is replete with unsupported generalizations. These explanations are too general and lack the facts necessary to establish public rather than personal purposes of the organization." Under these circumstances, the court held the organization not entitled to exemption under section 501(c)(3).

In General Conference of the Free Church v. Commissioner, 71 USTC 920-923, an organization requesting exemption under section 501(c)(3) described its proposed activities in broad generalities rather than providing specific, detailed information. In denying exemption to the organization, the court held that the organization had not demonstrated that it was operated in furtherance of an exempt purpose or that it served exclusively public rather than private interests.

Revenue Procedure 92-4, 1992-1, C.B., 572, provides in Section 8.01 that the Service may decline to issue a ruling or determination letter whenever warranted by the facts and circumstances of a particular case.

Revenue Procedure 90-27, 1990-1, C.B. 514, provides in Section 5.02 that "Exempt status will be recognized in advance of operations if proposed operations can be described in sufficient detail to permit a conclusion that the organization will clearly meet the particular requirements of the section under which exemption is claimed. The organization must fully described the activities in which it expects to engage, including the standards, criteria, procedures, or other means adopted or planned for carrying out the activity.

Where the organization cannot demonstrate to the satisfaction of the Service that its proposed activities will be exempt, a record of actual operations may be required before a ruling or determination letter will be issued.

[REDACTED]

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In those cases where an organization is unable to describe fully its purposes and activities, a refusal to issue a ruling or determination letter will be considered an initial adverse determination letter from which administrative appeal rights will be afforded."

Concerning the organizational test required to be exempt under section 501(c)(3), you state that the purposes for which your organization is organized are exclusively charitable and educational. However, your Articles of Incorporation state that you are organized for the following purposes:

1. to organize concerned citizens and energy consumers who collectively purchase large quantities of electricity and gas from large utility companies;
2. to educate individual energy consumers regarding utility issues;
3. to protect the interests of utility consumers through the intervention in matters before public utility commissions in the United States; and
4. to do anything else necessary to protect the interests of utility consumers.

While your Articles of Incorporation provide for the distribution of your assets in the event of dissolution to qualified 501(c)(3) entities, we cannot determine whether your purposes serve charitable purposes since you have not provided sufficient information for us to determine whether your proposed activities will benefit a charitable class of individuals. In addition, your purposes are broader than those permitted under section 501(c)(3). Therefore, we have determined you do not meet the organizational test required to be exempt under this section.

Concerning the operational test required to be exempt under section 501(c)(3), an organization must demonstrate that it is operated exclusively for one or more purposes described in this section, that no part of its net earnings inures to the benefit of private shareholders or individuals and that the organization does not engage in substantial legislative activities or participate on behalf of or in opposition to any candidate for public office.

You state in your application that your organization is not fully operational at this time and that no activities have been conducting during the past year. Revenue Procedure 90-27 states in part that "Exempt status will be granted in advance of operations if the organization can describe its activities in sufficient detail to permit a conclusion that it will meet the requirements of the section under which exemption is claimed." Revenue Procedure 92-4 also states that "the Service may decline to issue a determination letter when an organization cannot describe its activities in sufficient detail to show that it meets all of the legal requirements needed to be exempt under this section."

Like the organizations described in LaVerdad v. Commissioner, Levy Family Tribe and General Conference of the Free Church v. Commissioner, you have not described your proposed activities in sufficient detail to enable us to make a determination whether you serve exclusively public rather than private purposes and are operated exclusively for exempt purposes.

Based on the information submitted, we are unable to make a determination as to whether your organization is entitled to exemption under section 501(c)(3). In accordance with this determination, you are required to file federal income tax returns on Form 1120.

Contributions to your organization are not deductible under sections 170(c), 2055, 2106 and 2522 of the Code.

In accordance with the provisions of section 6104(c) of the Code, a copy of this letter will be sent to the appropriate state officials.

If you do not agree with our refusal to make a determination regarding your tax exempt status under section 501(c)(3), you may request consideration of this matter by the Office of Regional Director of Appeals. To do this, you should file a written appeal as explained in the enclosed Publication 892.

Your appeal should give the facts, law and any other information to support your position. If you want a hearing, please request it when you file your appeal and you will be contacted to arrange a date. The hearing may be held at the regional office or at any mutually convenient district office. If you will be represented by someone who is not one of your principal officers, that person will need to file a Power of Attorney or tax information authorization with us.

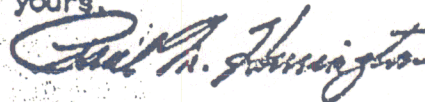
If you don't appeal this determination within 30 days from the date of this letter, as explained in Publication 892, this letter will become our final determination on this matter. Further, if you do not appeal this determination in a timely manner, it will be considered by the Internal Revenue Service as a failure to exhaust administrative remedies. Section 7428(b)(2) of the Code provides, in part, that "A declaratory judgment or decree under this section shall not be issued in any proceeding unless the Tax Court, the Claims Court, or the district court of the United States for the District of Columbia determined that the organization involved has exhausted administrative remedies available to it within the Internal Revenue Service."

Appeals submitted which do not contain all of the information required by Publication 892 will be returned for completion.


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If you have any questions, please contact the person whose name and telephone number are shown in the heading of this letter.

Sincerely yours,



District Director

Enclosure: Publication 892

cc: State Attorney General 